

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:24-cv-00163-KDB**

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|----------------------------|---|---------------------|
| AJANAKU MURDOCK, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | <u>ORDER</u> |
| |) | |
| |) | |
| FNU ADKINS, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

THIS MATTER is before the Court on initial review of Plaintiff’s Complaint, [Doc. 1], filed under 42 U.S.C. § 1983. See 28 U.S.C. §§ 1915(e)(2) and 1915A. Plaintiff is proceeding in forma pauperis in this matter. [Docs. 4, 6].

I. BACKGROUND

Pro se Plaintiff Ajanaku Murdock (“Plaintiff”) is a prisoner of the State of North Carolina currently incarcerated at Central Prison in Raleigh, North Carolina. On July 11, 2024, he filed this action pursuant to 42 U.S.C. § 1983, naming as Defendants FNU Adkins, FNU Baers, FNU Emig, and FNU Sigmon, all identified as officials at Alexander Correctional Institution (“Alexander”) in Taylorsville, North Carolina. [Doc. 1]. Plaintiff names Defendants in their individual and official capacities. [Id. at 2-3]. Plaintiff alleges that the following occurred on December 12, 2023, at Alexander.

I was unjustifiably sprayed by Officers Adkins and Baers while Sgt. Emig was in the block for NOT taking off my crown. My hand was smashed in the trap door which is also against policy. Sgt. Emig refused to come address the situation despite my screams for help. As a result, I was assaulted by the officers with the trap door and the O.C. spray which created an allergic reaction and created an injury to my hand.

[Id. at 5 (errors uncorrected)].

Plaintiff claims that Defendants violated his Eighth Amendment rights in assaulting him and failing to intervene to stop the assault. [Id. at 3]. Plaintiff alleges that he suffered skin irritation and an allergic reaction from the spray and injury to his hand. [Id. at 5]. Plaintiff seeks monetary relief only. [Id.].

II. STANDARD OF REVIEW

Because Plaintiff is proceeding pro se, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). Furthermore, § 1915A requires an initial review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” and the court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from such relief.

In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). Furthermore, a pro se complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his Complaint which set forth a claim that is cognizable under federal law. Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

III. DISCUSSION

To state a claim under § 1983, a plaintiff must allege that he was deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed

by a “person” acting under color of state law. See 42 U.S.C. § 1983; Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999); Health & Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166, 143 S.Ct. 1444 (2023). Plaintiff’s Complaint fails initial review for several reasons.

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments,” U.S. Const. amend. VIII, and protects prisoners from the “unnecessary and wanton infliction of pain.” Whitley v. Albers, 475 U.S. 312, 319 (1986). To establish an Eighth Amendment claim, an inmate must satisfy both an objective component—that the harm inflicted was sufficiently serious—and a subjective component—that the prison official acted with a sufficiently culpable state of mind. Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996). In adjudicating an excessive force claim, the Court must consider such factors as the need for the use of force, the relationship between that need and the amount of force used, the extent of the injury inflicted, and, ultimately, whether the force was “applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm.” Whitley, 475 U.S. at 320-21.

The Eighth Amendment’s Cruel and Unusual Punishments Clause also imposes on prison officials a duty to protect prisoners from violence at the hands of other prisoners and other prison officials. See Farmer v. Brennan, 511 U.S. 825, 833 (1994). Still, not “every injury suffered by one prisoner at the hands of another . . . translates into constitutional liability for prison officials responsible for the victim’s safety.” Id. at 834. To state a claim against a prison official for failure to protect, an inmate must show: (1) “serious or significant physical or emotional injury,” and (2) that prison officials exhibited deliberate indifference to inmate health or safety.” De’Lonta v. Angelone, 330 F.3d 630, 634 (4th Cir. 2003) (internal quotation marks omitted). To show deliberate indifference, the inmate “must show both (1) ‘that the [prison] official in question subjectively recognized a substantial risk of harm’ and (2) that the official also ‘subjectively

recognized’ that any actions he took in response ‘were inappropriate in light of that risk.’” Ford v. Hooks, --- F.4th ---, 2024 WL 3260902, at *4 (Jul. 2, 2024) (quoting Parrish ex rel. Lee v. Cleveland, 372 F.3d 294, 303 (4th Cir. 2004) (cleaned up)).

Taking Plaintiff’s allegations as true and giving him the benefit of every reasonable inference, he has nonetheless failed to state an Eighth Amendment claim against any Defendant. Plaintiff vaguely claims that he was “unjustifiably sprayed ... for NOT taking off [his] crown” and that his hand was smashed in the trap door. [Doc. 1 at 5]. As such, Plaintiff’s allegations suggest that he was pepper sprayed for refusing to follow an order. While the unjustified use of pepper spray by a prison official that causes harm to a prisoner may constitute a constitutional violation, a prisoner’s refusal to follow a direct order may warrant the use of pepper spray. Moreover, Plaintiff failed to allege how his hand was injured in the trap door or which Defendant or Defendants was responsible. Finally, because Plaintiff has not stated a claim for excessive force against any Defendant, he has also failed to state a claim based on the failure to intervene.

While Plaintiff may be able to state a cause of action, the allegations before the Court are too vague and conclusory to satisfy the most basic pleading requirements. See Fed. R. Civ. P. 8(a)(2) (requiring a “short and plain statement of the claim showing that the pleader is entitled to relief”); Simpson v. Welch, 900 F.2d 33, 35 (4th Cir. 1990) (conclusory allegations, unsupported by specific allegations of material fact are not sufficient); Dickson v. Microsoft Corp., 309 F.3d 193, 201-02 (4th Cir. 2002) (a pleader must allege facts, directly or indirectly, that support each element of the claim).

Next, Plaintiff purports to sue the Defendants, who are state officials, for money damages in their official capacities. However, “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office.” Will v. Dep’t of

State Police, 491 U.S. 58, 71 (1989). Because a state is not a “person” under § 1983, state officials acting in their official capacities cannot be sued for damages thereunder. Allen v. Cooper, No. 1:19-cv-794, 2019 WL 6255220, at *2 (M.D.N.C. Nov. 22, 2019). Furthermore, the Eleventh Amendment bars suits for monetary damages against the State of North Carolina and its various agencies. See Ballenger v. Owens, 352 F.3d 842, 844-45 (4th Cir. 2003). As such, Plaintiff’s claims against Defendants in their official capacities do not survive initial review and will be dismissed.

Finally, Plaintiff fails to state any allegations against Defendant Sigmon. To establish liability under 42 U.S.C. § 1983, a plaintiff must show that the defendants “acted personally” to cause the alleged violation. See Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977) (citation omitted). As such, Defendant Sigmon is also subject to dismissal for this reason.

The Court will allow Plaintiff to amend his Complaint to state a claim for relief in accordance with the terms of this Order. Any amended complaint will be subject to all timeliness and procedural requirements and will supersede the Complaint. Piecemeal amendment will not be permitted.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff’s Complaint fails initial review and will be dismissed without prejudice. The Court will allow Plaintiff thirty (30) days to amend his Complaint, if he so chooses, to properly state a claim upon which relief can be granted in accordance with the terms of this Order. Should Plaintiff fail to timely amend his Complaint in accordance with this Order, the Court will dismiss this action without prejudice.

ORDER

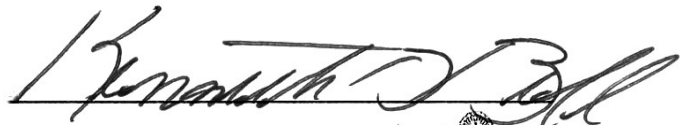
IT IS, THEREFORE, ORDERED that Plaintiff's Complaint fails initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B) for Plaintiff's failure to state a claim for relief and shall be **DISMISSED WITHOUT PREJUDICE** in accordance with the terms of this Order.

IT IS FURTHER ORDERED that Plaintiff shall have thirty (30) days in which to amend his Complaint in accordance with the terms of this Order. If Plaintiff fails to so amend his Complaint, the matter will be dismissed without prejudice.

The Clerk is respectfully instructed to mail Plaintiff a blank prisoner § 1983 form.

IT IS SO ORDERED.

Signed: July 29, 2024

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

